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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

TRANSMITTAL LETTER

Inventor : Brett A. Sneed
Serial No. : 10/068,914
Filing Date : February 7, 2002
Title : PROTECTIVE FLOORING UNIT WITH FLAP

Group/Art Unit : 1772
Examiner : Donald J. Loney

Docket No. : 504576.053

Mail Stop Appeal Brief - Patent
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicant submits herewith, Appellant's Appeal Brief under 37 C.F.R. § 41.37 in support of the Notice of Appeal filed on November 30, 2004. Enclosed is a check in the amount of \$250 to cover the small-entity fee for filing the Appeal Brief. A duplicate copy of this Transmittal Letter is also enclosed.

Acknowledgment of receipt is respectfully requested.

Respectfully submitted,

By

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

APPEAL BRIEF

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Alexandria, VA 22313-1450

In accordance with the provisions of 37 C.F.R. § 41.37, Applicant submits this
Appeal Brief in support of the Notice of Appeal filed on November 30, 2004.

I. REAL PARTY IN INTEREST

The real party in interest in the present appeal is the assignee, Better Life
Technology, L.L.C. The assignment was recorded at Reel 012511, Frame 0945 of the U.S.
Patent and Trademark Office records.

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Date: January 31, 2005

Signature: [Signature]

Printed Name: Erica J. Hetherman

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any additional amount required, or credit any
overpayment, to Deposit Account No.
19-4409.

II. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

III. STATUS OF CLAIMS

Claims 1-20 are pending in the application, claim 21 has been withdrawn pursuant to a restriction requirement. Claims 1-20 stand finally rejected under 35 U.S.C. § 102(b) as being anticipated by any of U.S. Patent No. 2,512,310 to *Corson*, U.S. Patent No. 4,816,316 to *Robbins*, U.S. Patent No. 3,746,607 to *Harmon et al.*, U.S. Patent No. 4,565,725 to *Spamer et al.*, or U.S. Patent No. 5,614,288 to *Bustos*. The present appeal is directed to claims 1-20, which are reproduced in Appendix A attached hereto.

IV. STATUS OF AMENDMENTS

No amendments to the claims have been made subsequent to the Office Action of June 30, 2004, in which the examiner made final the rejection of claims 1-20 of the present application.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The present invention is directed to a protective flooring unit or mat having a flap along one outer edge of the unit, the flap having a thickness less than that of the main body of the mat. The flap enables separate flooring units to be joined by placing an overlapping portion of a second flooring unit over the flap of a first unit to provide a nearly seamless transition between the two adjoining mats. Multiple mats may be joined using the overlapping flaps to cover large areas of floor, leaving no exposed underlying floor between the adjoining mats.

With reference to FIGS. 1-6 of the present application, independent claim 1 (and thus dependent claims 2-6) is directed to a protective flooring unit 10 comprising a main body 18 having opposed first and second edges 16c, 16d and opposed third and fourth edges 16a, 16b. Main body 18 includes an overlapping portion 24, wherein a maximum thickness of the overlapping portion approximately equals a maximum thickness of the main body. Flooring unit 10 further includes a single flap 22 of uniform thickness extending outwardly from the first edge of the main body, wherein a thickness of the flap is less than a maximum thickness of the main body.

Independent claim 7 (and thus dependent claims 8-13) is directed to a protective flooring unit 10 comprising a main body 18 having an upper surface 14, opposed first and second edges 16c, 16d and opposed third and fourth edges 16a, 16b. Main body 18 includes an overlapping portion 24, wherein a maximum thickness of the overlapping portion approximately equals a maximum thickness of the main body, and a uniform pattern of raised pads 20 extending upwardly along the upper surface. Flooring unit 10 further includes a single flap 22 of uniform thickness extending outwardly from the first edge of the main body, wherein the flap has a relatively flat upper surface.

Independent claim 14 (and thus dependent claims 15-20) is directed to a protective flooring unit 10 comprising a main body 18 having upwardly extending raised pads 20, opposed first and second edges 16c, 16d and opposed third and fourth edges 16a, 16b. Main body 18 includes an overlapping portion 24, wherein a maximum thickness of the overlapping portion approximately equals a maximum thickness of the main body. Flooring unit 10 further includes a single flap 22 of uniform thickness extending outwardly from the first edge of the main body, wherein a thickness of the flap is less than a maximum thickness of the main body.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The grounds of rejection to be reviewed on appeal are as follows:

1. Whether claims 1-20 are unpatentable under 35 U.S.C. § 102(b) as being anticipated by any of U.S. Patent No. 2,512,310 to *Corson*, U.S. Patent No. 4,816,316 to *Robbins*, U.S. Patent No. 3,746,607 to *Harmon et al.*, U.S. Patent No. 4,565,725 to *Spamer et al.*, or U.S. Patent No. 5,614,288 to *Bustos*.

VII. ARGUMENT

A. Appellant's Claims are not anticipated by *Corson*

The Examiner has rejected claims 1-20 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 2,512,310 to *Corson*.

Corson (attached hereto as Appendix B) discloses a rubber floor mat having resilient characteristics to provide cushioning. As best seen in FIG. 1 of *Corson*, a series of parallel flexible web 11 and rib portions 12 extend across the floor mat. As seen in the cross-sectional view of FIG. 3, a rib 12 and a web 11 adjacent each of two opposing edges of the mat.

Claims 1, 7, and 14 of the present application each set forth a protective flooring unit having, among other things, a single flap extending outwardly from a first edge of a main body. As best seen in FIG. 2 of the present application, flap 22 extends outwardly from a first edge 16c such that an overlapping portion 24 of an adjacent flooring unit may be laid upon the flap to provide a nearly seamless adjoinment of the flooring units. Furthermore, claims 1, 7, and 14 require that a maximum thickness of the overlapping portion 24 along second edge 16d, and a

maximum thickness of the third and fourth edges 16a, 16b, approximately equal a maximum thickness of the main body.

Corson, however, does not disclose a flooring unit having a single flap, as required in every claim of the present application, and does not disclose an overlapping portion and third and fourth opposing edges that approximately equal a maximum thickness of the main body, as required in every claim of the present application. Assuming the web 11 of *Corson* corresponds to the flap of the present application, FIG. 3 shows that web 11 extends from both of opposed first and second edges of the mat. Claims 1, 7, and 14 of the present application, however, structurally limits the flooring unit to a single flap extending only from a first edge of the flooring unit. The mat disclosed in *Corson* does not have a single flap extending only from a first edge.

Furthermore, claims 1, 7, and 14 of the present application further clarify that the flap extends only from one edge of the flooring unit by requiring that a maximum thickness of the overlapping portion 24 along second edge 16d and opposing third and fourth edges 16a, 16b, approximately equal a maximum thickness of the main body portion of the flooring unit. In other words, the flooring unit has three edges which have a thickness approximately equal to a maximum thickness of the mat, with the first edge (from which the flap extends) not limited to that thickness. Thus, as described in a preferred embodiment of the present application, the extending flap is thinner than the other three edges, allowing the overlapping portion of an adjoining mat to be laid on top without creating a noticeable bump or seam.

By contrast, *Corson* shows a mat having two opposing edges of one thickness, and two opposing edges of another thickness. Thus, *Corson* does not disclose a mat in which an

overlapping portion and third and fourth opposing edges are of a thickness approximately equal to a maximum thickness of the mat, as required in all claims of the present application.

As provided in MPEP §2131:

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference." *Verdegall Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed Cir. 1987). "the identical invention must be shown in as complete detail as contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d, 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim.

Because *Corson* does not disclose every element present in any one of independent claims 1, 7, or 14 of the present application, the claims are not anticipated by *Corson* and the examiner's rejection is improper and should be overturned.

B. Appellant's Claims are not anticipated by Robbins

The Examiner has rejected claims 1-20 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,816,316 to *Robbins*.

Robbins (attached hereto as Appendix C) discloses a ribbed sheet intended to prevent tears in one portion of the sheet from propagating across the sheet (Abstract of *Robbins*). As seen in FIGS. 1-5 of *Robbins*, a series of ribs 20 extend across the sheet in either a parallel linear pattern (FIG. 1), or a square pattern (FIG. 2) In the case of FIG. 1, opposing edges 18 are identical, and opposing edges 16 are identical.

Claims 1, 7, and 14 of the present application each set forth a protective flooring unit having, among other things, a single flap extending outwardly from a first edge of a main body. As best seen in FIG. 2 of the present application, flap 22 extends outwardly from a first edge 16c such that an overlapping portion 24 of an adjacent flooring unit may be laid upon the flap to provide a nearly seamless adjoinment of the flooring units. Furthermore, claims 1, 7, and

14 require that a maximum thickness of the overlapping portion 24 along second edge 16d and a maximum thickness of the third and fourth edges 16a, 16b approximately equal a maximum thickness of the main body.

Robbins, however, does not disclose a flooring unit having a single flap, as required in every claim of the present application, and does not disclose an overlapping portion and third and fourth opposing edges that approximately equal a maximum thickness of said main body, as required in every claim of the present application. Even assuming either edges 16 or 18 of *Robbins* can be considered a "flap" as described in the present application, that "flap" is present on two opposing edges of the sheet. Claims 1, 7, and 14 of the present application, however, structurally limits the flooring unit to a single flap extending only from a first edge of the flooring unit. Thus, the sheet disclosed in *Robbins* does not have a single flap extending only from a first edge.

Claims 1, 7, and 14 of the present application clarify that the flap extends only from one edge of the flooring unit by requiring that a maximum thickness of the overlapping portion 24 and opposing third and fourth edges 16a, 16b, approximately equal a maximum thickness of the main body portion of the flooring unit. Thus, as described in a preferred embodiment of the present application, the flap is thinner than the other three edges, allowing an overlapping portion of an adjoining mat to be laid on top without creating a noticeable bump or seam.

Robbins, however, discloses only a mat having two opposing edges of one thickness, and two opposing edges of another thickness. Thus, *Robbins* does not disclose a mat in which an overlapping portion and third and fourth opposing edges are of a thickness

approximately equal to a maximum thickness of the mat, as required in all claims of the present application.

Because *Robbins* does not disclose every element present in any one of independent claims 1, 7, or 14 of the present application, the claims are not anticipated by *Robbins* and the examiner's rejection is improper and should be overturned.

C. Appellant's Claims are not anticipated by *Harmon*

The examiner has rejected claims 1-20 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 3,746,607 to *Harmon et al.*

Harmon (attached hereto as Appendix D) discloses sheet material having thin areas 31 and thick areas 32 which can be cast as various patterns, including longitudinal ribs (see FIGS. 1 and 2), squares (see FIG. 9), diamonds (see FIG. 14), or various other patterns.

Claims 1, 7, and 14 of the present application each set forth a protective flooring unit having, among other things, a single flap extending outwardly from a first edge of a main body. As best seen in FIG. 2 of the present application, flap 22 extends outwardly from a first edge 16c such that an overlapping portion 24 of an adjacent flooring unit may be laid upon the flap to provide a nearly seamless adjoinment of the flooring units. Furthermore, claims 1, 7, and 14 require that a maximum thickness of the overlapping portion 24 along second edge 16d and a maximum thickness of the third and fourth edges 16a, 16b approximately equal a maximum thickness of the main body.

Harmon, however does not disclose a flooring unit having a single flap, as required in every claim of the present application, and does not disclose an overlapping portion and third and fourth opposing edges that approximately equal a maximum thickness of said main

body, as required in every claim of the present application. As shown and described in all of the variations disclosed in *Harmon*, opposing first and second edges are identical, as are opposing third and fourth edges. Claims 1, 7, and 14 of the present application, however, structurally limits the flooring unit to a single flap extending only from a first edge of the flooring unit. The sheet disclosed in *Harmon* does not have a single flap extending only from a first edge.

Furthermore, claims 1, 7, and 14 of the present application clarify that the flap extends only from one edge by requiring that a maximum thickness of the overlapping portion 24 and opposing third and fourth edges 16a, 16b, approximately equal a maximum thickness of the main body portion of the flooring unit. Thus, as described in a preferred embodiment of the present application, the flap is thinner than the other three edges, allowing an overlapping portion of an adjoining mat to be laid on top without creating a noticeable bump or seam.

Harmon, however, discloses a sheet having one set of opposing edges of one thickness, and one set of opposing edges of another thickness. Thus, *Harmon* does not disclose a mat in which an overlapping portion and third and fourth opposing edges are of a thickness approximately equal to a maximum thickness of the mat, as required in all claims of the present application.

Because *Harmon* does not disclose every element present in any one of independent claims 1, 7, or 14 of the present application, the claims are not anticipated by *Harmon* and the examiner's rejection is improper and should be overturned.

D. Appellant's Claims are not anticipated by *Spamer*

The Examiner has rejected claims 1-20 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,565,725 to *Spamer et al.*

Spamer (attached hereto as Appendix E) discloses a composite plastic track having a series of longitudinal ribs 24 running across the track. As shown in FIG. 3 of *Spamer*, longitudinal ribs 24 extend between opposing edges of the track.

Claims 1, 7, and 14 of the present application each set forth a protective flooring unit having, among other things, a single flap extending outwardly from a first edge of a main body. As best seen in FIG. 2 of the present application, flap 22 extends outwardly from a first edge 16c such that an overlapping portion 24 of an adjacent flooring unit may be laid upon the flap to provide a nearly seamless adjointment of the flooring units. Furthermore, claims 1, 7, and 14 require that a maximum thickness of the overlapping portion 24 along second edge 16d and a maximum thickness of the third and fourth edges 16a, 16b approximately equal a maximum thickness of the main body.

Spamer does not disclose a flooring unit having a single flap, as required in every claim of the present application, and does not disclose an overlapping portion and third and fourth opposing edges that approximately equal a maximum thickness of said main body, as required in every claim of the present application. *Spamer* discloses only a track in which opposing first and second edges are identical, as are opposing third and fourth edges. Claims 1, 7, and 14 of the present application, however, structurally limits the flooring unit to a single flap extending only from a first edge of the flooring unit. The track disclosed in *Spamer* does not have a single flap extending only from a first edge.

Furthermore, claims 1, 7, and 14 of the present application clarify that the flap extends only from one edge by requiring that a maximum thickness of the overlapping portion 24 and opposing third and fourth edges 16a, 16b, approximately equal a maximum thickness of the main body portion of the flooring unit. In other words., the flooring unit has three edges which

have a thickness approximately equal to a maximum thickness of the mat. As described in a preferred embodiment of the present application, the flap is thinner than the other three edges, allowing an overlapping portion of an adjoining mat to be laid on top without creating a noticeable bump or seam.

By contrast, *Spamer* shows a mat having two opposing edges of one thickness, and two opposing edges of another thickness. Thus, *Spamer* does not disclose a mat in which an overlapping portion and third and fourth opposing edges are of a thickness approximately equal to a maximum thickness of the mat, as required in all claims of the present application.

Because *Spamer* does not disclose every element present in any one of independent claims 1, 7, or 14 of the present application, the claims are not anticipated by *Spamer* and the examiner's rejection is improper and should be overturned.

E. Appellant's Claims are not anticipated by *Bustos*

The Examiner has rejected claims 1-20 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,614,288 to *Bustos*.

Bustos (attached hereto as Appendix F) discloses a plastic slip surface having a series of longitudinal beads 12 and channels 8 extending between opposing edges.

Claims 1, 7, and 14 of the present application each set forth a protective flooring unit having, among other things, a single flap extending outwardly from a first edge of a main body. As best seen in FIG. 2 of the present application, flap 22 extends outwardly from a first edge 16c such that an overlapping portion 24 of an adjacent flooring unit may be laid upon the flap to provide a nearly seamless adjoinment of the flooring units. Furthermore, claims 1, 7, and 14 require that a maximum thickness of the overlapping portion 24 along second edge 16d and a

maximum thickness of the third and fourth edges 16a, 16b approximately equal a maximum thickness of the main body.

Bustos, however, does not disclose a flooring unit having single flap, as required in every claim of the present application, and does not disclose an overlapping portion and third and fourth opposing edges that approximately equal a maximum thickness of said main body, as required in every claim of the present application. *Bustos* discloses a track in which opposing first and second edges are identical, as are opposing third and fourth edges (see FIG. 1 and 2 of *Bustos*). Claims 1, 7, and 14 of the present application, however, structurally limits the flooring unit to a single flap extending only from a first edge of the flooring unit. The track disclosed in *Bustos* does not have a single flap extending only from a first edge..

Furthermore, claims 1, 7, and 14 of the present application require that the flap extends only from one edge by requiring that a maximum thickness of the overlapping portion 24 and opposing third and fourth edges 16a, 16b, approximately equal a maximum thickness of the main body portion of the flooring unit.

By contrast, *Bustos* shows a track having two opposing edges of one thickness, and two opposing edges of another thickness. Thus, *Bustos* does not disclose a mat in which an overlapping portion and third and fourth opposing edges are of a thickness approximately equal to a maximum thickness of the mat, as required in all claims of the present application.

Because *Bustos* does not disclose every element present in any one of independent claims 1, 7, or 14 of the present application, the claims are not anticipated by *Bustos* and the examiner's rejection is improper and should be overturned.

F. Dependent Claims are not Anticipated

Claims 2-6, 8-13, and 15-20 depend from independent claims 1, 7, and 14, respectively. Since claims 1, 7, and 14 are allowable for the reasons discussed above, claims 2-6, 8-13, and 15-20 are thus also allowable, and the examiner's rejection should be reversed.

VIII. APPENDICES

Attached hereto are the following Appendices:

Appendix A - Claims on Appeal

Appendix B - U.S. Patent No. 2,512,310 to *Corson*.

Appendix C - U.S. Patent No. 4,816,316 to *Robbins*.

Appendix D - U.S. Patent No. 3,746,607 to *Harmon et al*.

Appendix E - U.S. Patent No. 4,565,725 to *Spamer et al*

Appendix F - or U.S. Patent No. 5,614,288 to *Bustos*

IX. SUMMARY

For the foregoing reasons, Applicant respectfully submits that claims 1-20 are patentable over the cited references and should be allowed. Accordingly, Applicant respectfully requests that the Board reverse the Examiner's rejections and allow claims 1-20.

Respectfully submitted,

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APPENDIX A

Claims on Appeal

1. A protective flooring unit comprising:

a main body having opposed first and second edges and opposed third and fourth edges, said main body comprising an overlapping portion extending adjacent and parallel said second edge, wherein a maximum thickness of said overlapping portion and of said third and fourth edges approximately equals a maximum thickness of said main body; and

a single flap, wherein said flap is of uniform thickness and extends outwardly from said first edge of said main body, and wherein a thickness of said flap is less than a maximum thickness of said main body.

2. The protective flooring unit of claim 1, wherein said flooring unit is comprised of a sheet of material which may be manufactured to have varying thickness at different regions of the sheet.
3. The protective flooring unit of claim 2, wherein said flooring unit is comprised of a material selected from the group consisting of plastic, rubber, rubber composites, vinyl, foam and combinations thereof.
4. The protective flooring unit of claim 1, wherein said flap is formed integral with said main body.
5. The protective flooring unit of claim 1, wherein said main body has raised pads extending along an upper surface of the main body.
6. The protective flooring unit of claim 5, wherein said raised pads comprise ribs running a length of the flooring unit in a direction parallel the flap.

7. A protective flooring unit comprising:

a main body having an upper surface and opposed first and second edges and opposed third and fourth edges, said main body comprising an overlapping portion extending adjacent and parallel said second edge, wherein a maximum thickness of said overlapping portion and of said third and fourth edges approximately equals a maximum thickness of said main body, said main body having a uniform pattern of raised pads extending upwardly along said upper surface; and

a single flap, wherein said flap is of uniform thickness and extends outwardly from said first edge of said main body, and wherein said flap has a relatively flat upper surface.

8. The protective flooring unit of claim 7, wherein a thickness of said flap is no greater than a minimum thickness of said main body.

9. The protective flooring unit of claim 7, wherein said flap is formed integral with said main body.

10. The protective flooring unit of claim 7, wherein said raised pads are ribs.

11. The protective flooring unit of claim 10, wherein said ribs extend along a length of said main body in a direction parallel said flap.

12. The protective flooring unit of claim 11, wherein a maximum thickness of said main body is at least twice a minimum thickness of said main body.

13. The protective flooring unit of claim 9, wherein said flooring unit is comprised of a material selected from the group consisting of plastic, rubber, rubber composites, vinyl, foam and combinations thereof.

14. A protective flooring unit comprising:

a main body having upwardly extending raised pads and opposed first and second edges and opposed third and fourth edges, said main body comprising an overlapping portion extending adjacent and parallel said second edge, wherein a maximum thickness of said overlapping portion and of said third and fourth edges approximately equals a maximum thickness of said main body; and

a single flap, wherein said flap is of uniform thickness and extends outwardly from said first edge of said main body, and wherein said flap has a thickness that is less than a maximum thickness of said main body.

15. The protective flooring unit of claim 14, wherein said raised pads comprise ribs running a length of the unit in a direction parallel the flap.
16. The protective flooring unit of claim 14, wherein said flap has a thickness that is equal to or less than a minimum thickness of said main body.
17. The protective flooring unit of claim 14, wherein said overlapping portion has a maximum thickness that is less than a maximum thickness of a remainder of said main body.
18. The protective flooring unit of claim 17, wherein said overlapping portion has a width about equal to a width of said flap.
19. The protective flooring unit of claim 14, wherein a combined thickness of a maximum thickness of said overlapping portion and a thickness of said flap is no more than twice a maximum thickness of said main body.
20. The protective flooring unit of claim 14, wherein a combined thickness of a maximum thickness of said overlapping portion and a thickness of said flap is about equal a maximum thickness of said main body.

21. (withdrawn) A method of covering a floor comprising the steps of:

positioning a first flooring unit on the floor, said first flooring unit comprising a main body having upwardly extending ribs and a flap extending along an edge of said main body parallel said ribs, wherein said flap has a thickness that is less than a maximum thickness of said main body; and

laying a second flooring unit on the floor, said second flooring unit comprising a main body having upwardly extending ribs and having an outer edge, wherein said laying step comprises laying the outer edge of said second flooring unit on top of the flap of said first flooring unit.